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7
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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN JOSE DIVISION

12 KAMAL DAYEKH,

13 Plaintiff,

14 v.

15 ROBERT MUELLER III, Director,
Federal Bureau of Investigation, ("FBI");

16 MICHAEL CHERTOFF, Secretary,
Department of Homeland Security, ("DHS");

17 EMILIO GONZALES, Director, U.S. Citizenship
and Immigration Services, ("USCIS");

18 DAVID N. STILL, District Director, USCIS;
FRANCIS D. SICILIANO, San Jose Field Office

19 Director, USCIS,

20 Defendants.

) No. C 07-5464 RS

) **ANSWER**

21
22 Defendants hereby submit their answer to Plaintiff's Complaint for Writ of Mandamus.

23 1. Defendants admit the allegations in Paragraph One.

24 2. Defendants admit the allegations in Paragraph Two.

25 3. Defendants admit the allegations in Paragraph Three.

26 4. Defendants admit the allegations in Paragraph Four.

27 5. Defendants admit the allegations in Paragraph Five.

28 6. Defendants deny the allegations in Paragraph Six; Rosemary Langley Melville is the

ANSWER

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1 District Director of the San Francisco district.

2 7. Defendants admit the allegations in Paragraph Seven.

3 8. Paragraph Eight consists of Plaintiff's allegations regarding jurisdiction, to which no
4 responsive pleading is required; however, to the extent a responsive pleading is deemed necessary,
5 Defendants deny the allegations in this paragraph.

6 9. Paragraph Nine consists of Plaintiff's characterization of the lawsuit, and thus no admission
7 or denial is required; however, to the extent a responsive pleading is deemed to be required, the
8 Defendants deny the allegations in this paragraph.

9 10. Defendants are without sufficient information to admit or deny the allegations in
10 Paragraph Ten.

11 11. Defendants are without sufficient information to admit or deny the allegations in
12 Paragraph Eleven.

13 12. Defendants are without sufficient information to admit or deny the allegations in
14 Paragraph Twelve.

15 13. Defendants admit the allegations in Paragraph Thirteen.

16 14. Paragraph Fourteen consists of Plaintiff's allegations regarding venue, to which no
17 responsive pleading is required..

18 **FACTS**

19 15. Defendants are without sufficient information to admit or deny the allegations in
20 Paragraph Fifteen.

21 16. Defendants are without sufficient information to admit or deny the allegations in
22 Paragraph Sixteen.

23 17. Defendants admit the allegations in Paragraph Seventeen.

24 18. Defendants deny the aalegations in Paragraph Eighteen.

25 **CLAIMS**

26 19. Defendants deny the allegations in Paragraph Nineteen.

27 20. Defendants are without sufficient information to admit or deny the allegations in
28 Paragraph Twenty.

21. Defendants deny the allegations in Paragraph Twenty-One.

22. Paragraph Twenty-Two consists of Plaintiff's prayer for relief and request for costs and fees, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny the allegations in this paragraph.

FIRST AFFIRMATIVE DEFENSE

The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(6) because plaintiff fails to state a claim upon relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: February 25, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/
EDWARD A. OLSEN
Assistant United States Attorney
Attorneys for Defendants